INDEX.

	Page
Petition for Writ of Certiorari	1
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	3
Specifications of Errors to be Urged	10
Reasons for Granting the Writ	11
Conclusion	22
Appendix	23

TABLE OF CASES.

Arkansas v. Bowen, 3 App. D.C. 537	21
Beasley v. Mutual Housing Co., 59 App. D.C. 245, 39 F. 2d 290	19
Clark v. Mutual Reserve Fund Life Association, 14 App. D.C. 154	19
Cunard S.S. Co. v. Smith, 255 Fed. 846	13
Doe v. Braden, 16 How. 635, 14 L. ed. 1090	17
Doidge v. Cunard S.S. Co., 19 F. 2d 500	13
Galveston, H. & S. A. R. Co. v. Wallace, 223 U.S. 481	21
Hodgson v. Bowerbank, 5 Cranch 303, 3 L. ed. 108	13
Huntington v. Attrill, 146 U.S. 657	21
In the Matter of the Application of Harry Mow to Vacate a Search Warrant (Sept. 5, 1952) District Court of Nassau County, First District, State of New York	20
International Refugee Organization v. Republic S.S. Corp., 92 F. Supp. 674	13
Jackson v. Twentymen, 2 Pet. 136, 7 L. ed. 374	13
Kavourgias v. Nicholson Co., Ltd., 48 F. 2d 96	13
Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198	21
Maccarone v. Big Sign Shop, Inc., 59 App. D.C. 345, 41 F. 2d 567	18

Page

Montalet v. Murray, 4 Cranch 46, 2 L. ed. 545 13
Mossman v. Higginson, 4 Doll. 12, 1 L. ed. 720 13
National Mutual Insurance Co. v. Tidewater T. Co., 337 U.S. 582 .....14, 16, 20
Nield v. District of Columbia, 71 App. D.C. 306, 110 F. 2d 246 15
O'Donoghue v. United States, 289 U.S. 516.....12, 14, 16
Rogers v. Guaranty Trust Co., 288 U.S. 123..... 19
Sevilla v. Elizalde, 72 App. D.C. 108, 112 F. 2d 29.... 17
The Antelope, 10 Wheat. 66, 6 L. ed. 268 21
The Pacquete Habana, 189 U.S. 453 13
United States v. National City Bank of New York, 83 F. 2d 236 13
Wisconsin v. Pelican Insurance Company of New Orleans, 127 U.S. 265 21

CONSTITUTION AND STATUTES.

Constitution of the United States, Article I, Section 8, Clause 17 .....2, 10, 12, 13, 15
Constitution of the United States, Article III, Section 2 .....2, 10, 12, 13, 15
Judiciary Act of 1789, Section II 13
28 U. S. C. Section 1332 2
District of Columbia Code (1940, 1951), Title II, Section 306 .....2, 3, 11
District of Columbia Code (1940), Title II, Sections 301, 305, 325 3

MISCELLANEOUS.

Field, The Doctrine of Political Questions in the Federal Courts, 8 Minn. L. Rev. 584 17
Fletcher, Cyclopedia Corporations (1933 ed.), Vol. 18, pp. 367-374 19
Weston, Political Questions, 38 Harv. Law Review 296 17
White Paper on China (United States Relations with China, 1944-1949) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No.

PANG-TSU MOW and VE-SHUEN HSIANG, *Petitioners,*

v.

REPUBLIC OF CHINA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioners, appellants below, Pang-Tsu Mow and Ve-Shuen Hsiang, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause on November 20, 1952 (R. 439).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is set forth at R. 428. The opinion of the United States District Court for the District of Columbia rendered on December 10, 1951, is set forth in 101 F. Supp. 646. The order of the United States District Court for the District of Columbia entered March 3, 1952, is set forth at R. 335-337.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on November 20, 1952 (R. 439). The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether U.S. Constitution Article I, Section 8, Clause 17, and Title 11, Section 306 of the District of Columbia Code (1951) operate to expand the jurisdiction of the United States District Court for the District of Columbia as established by U.S. Constitution Article III, Section 2 and 28 U.S.C. Section 1332 so as to confer upon such court jurisdiction to entertain an action between the Republic of China and two of its diplomatic and military officials, temporarily residing in the District of Columbia, when such jurisdiction is beyond the scope of all other United States District Courts.

2. Whether the United States District Court for the District of Columbia has jurisdiction to entertain an action between a foreign government and two of its officials raising issues of national politics and internal affairs of that foreign government.

3. Whether the United States District Court for the District of Columbia has jurisdiction to aid a foreign government in enforcing punitive and political decrees and mandates against its political and military officers.

STATUTES INVOLVED

The pertinent Constitutional provisions and statutes involved are Article I, Sec. 8, Cl. 17, and Article III, Sec. 2 of the Constitution of the United States, 28 U.S.C. Sec. 1332, and Title 11, Sec. 306 of the District of Columbia Code (1951). The relevant portions of these constitutional provisions and statutes are set out in the Appendix to this petition.

STATEMENT

This litigation was instituted on November 14, 1951 by complaint filed in the United States District Court for the District of Columbia in the name of the Republic of China against petitioners who are officers in the Chinese Air Force and representatives of that government in the United States, for an accounting, injunction and other relief in connection with the performance of their duties (R. 2). Jurisdiction of the Court was invoked under Title 11, Sections 301, 305, 306 and 325 of the District of Columbia Code (1940).

The petitioner Mow is a lieutenant-General in the Air Force of the Republic of China, and has been serving in the United States since 1943 as Chief Representative of the Chinese Air Force in U.S.A. (R. 11, 303). Since March, 1946, petitioner Mow has occupied the diplomatic post of Senior Air Representative for the Republic of China to the United Nations Military Staff Committee (R. 303, 311). Petitioner Hsiang is a Colonel in the Chinese Air Force and has served since January 1, 1948 as the executive officer of the Chinese Air Force in U.S.A. in direct charge of procurement matters. Both petitioners are citizens of the Republic of China temporarily sojourning in the District of Columbia.

The complaint alleges, *inter alia*, that petitioners have failed to account properly for funds entrusted to their care by respondent, and have refused to comply with governmental orders to turn over unexpended funds, official papers, documents and other records in their custody to respondent's designated representatives (R. 2-7). From the face of the complaint, it is clear that the jurisdiction of the United States District Court for the District of Columbia is sought to enforce orders issued by a foreign government to its official representatives dealing solely with the internal affairs of such foreign government. In answering, the petitioners denied the substantive allegations of the complaint and counterclaimed for libel and unlawful conversion (R. 302).

On the date the complaint was filed, the District Court for the District of Columbia issued on ex parte procedure a temporary restraining order. On December 10, 1951, the court issued a preliminary injunction which enjoined petitioners from disposing of any funds entrusted to or placed under the control of petitioners by respondents or any branch or agency thereof, and from exercising any control over, or removing, destroying, or disposing of any of the books, papers, documents, records, and equipment of the Chinese Air Force in U.S.A., or any other records or papers relating to the financial and business affairs and operations of the Chinese Air Force Office in U.S.A. (R. 135).

Petitioners appealed from the order of the District Court entered on December 10, 1951, granting the preliminary injunction and denying petitioners' motion to dismiss the complaint (R. 138). This appeal was docketed as case No. 11265. While this appeal was pending and before hearing thereon, the District Court on March 3, 1952, issued an order, upon motion of the respondent, striking the pleadings of the petitioner Mow, entering a default judgment, making permanent the preliminary injunction as to this petitioner, and referring certain aspects of the case to the court auditor for further proceedings (R. 335). Petitioners also appealed from this order to the United States Court of Appeals for the District of Columbia Circuit (R. 337). This appeal was docketed as case No. 11392.

The appeals were consolidated, jointly argued, and the Court of Appeals rendered its decision on November 20, 1952 (R. 428). Insofar as it is material to this petition, the Court held, with respect to case No. 11265, that the District Court for the District of Columbia has jurisdiction to entertain the action and affirmed the grant of the preliminary injunction. The appeal in case No. 11392 was dismissed. The Court of Appeals held that the default judgment, the reference to the auditor, and those portions of the order of March 3, 1952 which struck the pleadings of Mow and ordered that he take the affirmative steps set

forth therein, are not final and appealable. It was also held that, since the permanent injunction is grounded on the default judgment, which is subject to review under Rule 54(b) of the Federal Rules of Civil Procedure, that injunction is temporary in nature.

Review is sought in this proceeding from that portion of the judgment of the Court of Appeals holding that the District Court for the District of Columbia has jurisdiction to issue the preliminary and permanent injunctions.

The litigation has its origin and existence in the internal politics of the truncated Republic of China on Formosa and reflects the factionalized state of that government's affairs and the corruption which permeates its activities. Petitioner Mow, who is the acknowledged "Father of the Chinese Air Force" (R. 178), has rebelled against the corruption in the homeland in the conduct of the procurement of materials and supplies for the rebuilding of the Chinese Air Force, has made public disclosures of the state of conditions to the American government, and has directly protested to the Chiang Kai-shek regime. This litigation is part of the retribution with which the dominant faction of the Formosan government seeks to punish the petitioners for their embarrassing disclosures. Specific instances of such corruption were set forth in detail in the answer (R. 304).

These included instructions to General Mow from Formosa by the Chief of the Chinese Air Force, one C. J. Chow, to divert American dollars from the United States to Chow's personal accounts in other countries; to transfer American dollars to Formosa, Hong Kong and other places for the private and personal use of various individuals; to purchase surplus airplanes through dummy corporations at prices substantially in excess of the cost of the same airplanes from United States government sources; and to buy aviation gasoline and radar equipment from specified sources at prices greatly in excess of those prevailing on the open market in the United States (R. 304-306).

During 1949, Mow became increasingly concerned with evidence brought to his attention in the United States of the corrupt use of the dwindling funds available to his country for the procurement of military materiel in the the United States. The answer asserts that after many fruitless efforts to prevent the diversion of these funds from their intended and proper use, Mow returned to Formosa during the latter part of October, 1950, for the express purpose of bringing to the personal attention of Chiang documentary evidence of graft and corruption in connection with the procurement of supplies. During the first part of November, 1950, Mow had several discussions with Chiang and presented to him documentary proof in a series of cases showing that General Chow was guilty of the misappropriation of Chinese funds. Specifically, Mow pointed out that Chow had instructed him to purchase certain P-51 surplus aircraft through the Commerce International China Corporation at a price of about $36,840 per unit when the same aircraft in much better condition than the units claimed to be available to Commerce International China could have been obtained through sources available to General Mow's office for approximately $28,000 each.

Petitioner Mow also called attention to instructions which had been received to purchase 100 octane aviation gasoline through a brokerage company in Formosa which used as its United States agent a company known as South China Enterprise, which was simply a grocery store in San Francisco's Chinatown with only a few hundred dollars of visible assets. The grocery store proprietor knew nothing about gasoline and called on another middleman, who, in turn, contracted to buy the gasoline from Cities Service Oil Company. The result of following General Chow's instructions would have been the expenditure of a substantially higher amount of money for aviation fuel than was necessary in order to benefit and profit Chow and his associates and an assortment of middlemen.

These conferences were followed by steps of reprisal from Formosa. In the latter part of April, 1951, an order was issued by the executive branch of the Chinese government, approved by Chiang, reorganizing the several military purchasing organizations in the United States (R. 21-23). In this reorganization, the Chinese Air Force Office in U.S.A., headed by Petitioner Mow, was abolished and its functions sought to be transferred to a consolidated agency known as "Chinese Defense Ministry Procurement Commission in the U.S.A." A General P. T. K. Pee, Military Attaché of the Chinese Embassy in Washington, who had previously been charged by Mow as being responsible for corrupt use of governmental funds, was appointed Chairman of the new Commission (R. 21). On August 21, 1951, Mow received further orders issued by Chiang suspending him from all duties, directing him to turn over all governmental funds and records and to return to China immediately to respond to charges of dereliction of duty and disobedience of orders (R. 23-25). In a press statement simultaneously released by the Chinese News Service, a registered agency of the Chinese government, it was stated that Mow had been charged in a mandate issued by Chiang Kai-shek with "dereliction of duties and disobedience of orders." Reference was also made to a further statement issued by a government spokesman in Formosa listing five charges against Mow consisting of lack of a clear statement of accounts; dereliction of duties; espousal of the cause of disloyal staff members; refusal to hand over public funds, and undermining the prestige of the national government and spreading rumors (R. 311-316).

The litigation seeks the aid of the United States District Court for the District of Columbia in carrying out the reorganization of the purchasing activities of the Republic of China in the United States by obtaining an order of such court directing an accounting by the petitioners and the turning over of the records and documents relating to the activities of the Chinese Air Force Office in U.S.A.

The litigation also raises the question as to the right of Chiang Kai-shek to exercise the powers of the office of President of China. On January 21, 1949, Chiang Kai-shek resigned from the office of President of the Republic of China with the avowed intention of retiring to private life (R. 49-52). Upon this resignation, the powers of the office of the presidency devolved upon Li Tsung-jen, who assumed direction of the Chinese government as Acting President (R. 34, 49-50). Chiang Kai-shek purportedly resumed his occupancy of the office of the presidency on March 1, 1950. Chiang's resignation occurred when the Chinese were in full retreat before the successful attack of the Communist forces, and his attempted resumption of the office of the presidency occurred after the withdrawal of the remnant of the Chinese forces to the Island of Formosa was accomplished under the direction of President Li.

The record contains a sworn opinion by an authority on Chinese constitutional law that Chiang Kai-shek's efforts to resume the presidency were constitutionally invalid and had no constitutional or historical basis (R. 43). The opinion states that under the circumstances of Chiang's withdrawal from office, he could constitutionally re-assume the office of the presidency only pursuant to a lawful election.

Under these circumstances, petitioners challenged the right of respondent to maintain this action and the validity of the orders of Chiang Kai-shek, directing the reorganization of the purchasing activities of the Republic of China in the United States, relieving them from their duties in connection therewith and directing them to turn over funds and records in their custody (R. 35).

The record also indicates that the petitioners have been directed by President Li to ignore these orders issued by Chiang Kai-shek and to continue the performance of their functions and duties (R. 40-42).

In order to ascertain the identity of the lawful President of China, the District Judge directed a letter of inquiry to

Acting Secretary of State requesting advice as to (1) the government recognized by the government of the United States as the government of the Republic of China, (2) the identity of the Ambassador representing such government in the United States, and (3) the identity of the President of the Republic of China (R. 54). The reply from the Department of State categorically stated that this government recognizes the National Government of the Republic of China, the seat of which is at Taipei, Formosa, and that such government is represented in the United States by Ambassador V. K. Wellington Koo. With respect to the identity of the President of the Republic of China, the response was couched in different and careful diplomatic language and did not affirmatively state who this government considers to be President. It simply enclosed a copy of a diplomatic note from the Chinese Ambassador which stated that Generalissimo Chiang Kai-shek has resumed the office of the President of China on March 1, 1950 (R. 60).

The equivocal nature of this diplomatic language is indicated by the fact that on March 3, 1950, two days after the Chinese Ambassador had advised the Department of State of the purported resumption by Chiang of the presidency, President Truman entertained General Li at an official White House luncheon in his capacity as Acting President of China (R. 173). This formal recognition of the status of Li is consistent with other formal acts recognizing Li as head of the Republic of China. In the so-called White Paper on China, issued by the Department of State (United States Relations with China, 1944-1949), the retirement of Chiang and the assumption of the presidency by General Li was recognized and accepted (R. 36). On December 2, 1949, the Minister of Foreign Affairs for the Republic of China officially designated General Li as Acting President in the Laissez Passer in lieu of diplomatic passport issued in connection with a trip of General Li to the United States for medical treatment (R. 42). It is significant to observe that, although Ambassador Koo also noti-

fied this government of the retirement of Chiang and the constitutional succession of Li to the office of the presidency, no constitutional support was cited by Ambassador Koo for the resumption of that office by Chiang (R. 61).

This case presents for the first time the questions of both the power and wisdom of the United States District Court for the District of Columbia to entertain actions between a foreign government and its accredited representatives, temporarily sojourning in the District of Columbia in connection with the performance of their official duties, for the purpose of requiring such representatives to carry out and comply with orders issued by the foreign government in furtherance of the management and execution of its internal affairs.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that U.S. Constitution Article I, Section 8, Clause 17, permits the expansion of the jurisdiction of the United States District Court for the District of Columbia as delineated in U.S. Constitution Article III, Section 2, Clause 1, to entertain an action between a foreign government and two of its nationals who are its accredited representatives, temporarily sojourning in the District of Columbia in connection with their official duties;

(2) In holding that the jurisdiction of the United States District Court for the District of Columbia to entertain actions between a foreign government and its accredited representatives sojourning temporarily in the District of Columbia, is broader than the jurisdiction of all other Federal District Courts with respect to such litigation;

(3) In holding that, when parts of Maryland and Virginia were incorporated within the District of Columbia, the authority of Congress under Article I of the Constitution was sufficient to enable it to confer jurisdiction upon the United States District Court for the District of Columbia

to entertain an action between a foreign state and its citizens;

(4) In holding that Congress in enacting Title 11, Section 306, District of Columbia Code (1951), which is a general jurisdictional statute, conferred upon the United States District Court for the District of Columbia jurisdiction to entertain an action between a foreign state and its citizens;

(5) In failing to find that the power of the United States District Court for the District of Columbia was invoked to obtain compliance by diplomatic and military officials with the orders of their government relating to the administration of that government's internal affairs;

(6) In holding that the right of the Republic of China to maintain the action is unaffected by the issue as to who is President of the Republic of China;

(7) In failing to find that the petitioners' liability to account for funds and records is directly affected by the issue as to who is the President of the Republic of China;

(8) In holding that injunctive relief need not be withheld even though it is a substitute for the enforcement of punitive and political decrees and mandates issued by a foreign government against its political and military officers; and

(9) In holding that the United States District Court for the District of Columbia has jurisdiction over the parties and the subject matter of the controversy.

REASONS FOR GRANTING THE WRIT

In holding that the United States District Court for the District of Columbia has jurisdiction to entertain an action between a foreign government and its officials involving its political and internal affairs, the United States Court of Appeals for the District of Columbia has decided a question of general importance and of substance relating to the construction and application of the Constitution of the United States and a statute of the United States applicable to

the District of Columbia which has not been but should be settled by this Court. The question is one of first impression.

The holding of the Court of Appeals that the United States District Court for the District of Columbia may exercise its jurisdiction to compel compliance by foreign diplomatic and military officers with orders of their government, dealing with its internal affairs, and to enforce the political and punitive decrees of a foreign government against its officials, so far departs from the accepted and usual course of judicial expression in this country as to require an exercise of this Court's power of supervision. The decision of the Court of Appeals is of great present and potential importance, and, in our view, exhibits a serious misconception of the right of the courts of the District of Columbia to regulate the internal affairs of foreign governments, which may well embarrass the conduct of this Country's foreign affairs unless corrected by this Court.

1. The question raised by the decision below is whether Article I, Section 8, Clause 17 of the Constitution empowers Congress, in the case of the Federal courts in the District of Columbia, to broaden the jurisdiction delegated to the Federal courts under Article III, Section 2 so as to confer jurisdiction upon the courts of the District of Columbia to entertain actions between aliens. Such persons are not comprehended as proper litigants before Federal courts under Article III, Section 2 of the Constitution. This issue is one of general importance and involves consequences much broader than the mere administration of the affairs of the District of Columbia. Diligent research discloses that the issue is one of first impression before this Court.

It is well settled that the District Court for the District of Columbia is a constitutional court ordained and established under Article III, Section 2 of the Constitution, and its jurisdiction as such is prescribed by the judicial powers delegated to the Federal courts under that constitutional provision. *O'Donoghue* v. *U.S.*, 289 U.S. 516, 545. Aliens

may not sue aliens in a Federal court. *Jackson* v. *Twentymen*, 2 Pet. 136, 7 L. ed. 374; *Hodgson* v. *Bowerbank*, 5 Cranch 303, 3 L. Ed. 108; *Montalet* v. *Murray*, 4 Cranch 46, 2 L. ed. 545; *Mossman* v. *Higginson*, 4 Dall. 12, 1 L. ed. 720; *Kavourgias* v. *Nicholaou Co. Ltd.*, 9 Cir., 48 F. 2d 96; *Doidge* v. *Cunard S.S. Co.* (Mass. 1927), 19 F. 2d 500; *Cunard S.S. Co.* v. *Smith* (N.Y. 1918), 255 Fed. 846, 167 C.C.A. 174; *International Refugee Organization* v. *Republic S.S. Corp.*, 92 F. Supp. 674. In no instance has this Court held that jurisdiction of such case could be placed in the regular Federal courts that Congress has been authorized to establish. A sovereignty bringing suit submits to the application of the same principles governing private suitors. *The Pacquete Habana*, 189 U.S. 453; *United States* v. *National City Bank of New York*, 83 F. 2d 236, 238.

In the *Mossman* case, *supra*, this court refused to give literal effect to Section 11 of the Judiciary Act of 1789, which had extended the jurisdiction of the Circuit Courts to suits where "an alien is a party" because of the limitation imposed by Article III of the Constitution. In concluding that the statute must receive a construction consistent with the Constitution, the court said that:

> ". . . as the legislative power of conferring a jurisdiction on the federal courts, is in this respect, confined to suits between *citizens and foreigners*, we must so expound the terms of the law, as to meet the case 'where, indeed, an alien is one party' but a citizen is the other." (Emphasis supplied.)

The Court of Appeals was of the opinion that the "harmonizing" processes of constitutional construction "leads inevitably to the conclusion that, when parts of Maryland and Virginia became originally incorporated within the District of Columbia, the authority of Congress over this ceded area, resting upon Article I, was sufficient to enable it to clothe the courts here with jurisdiction like that left behind in Maryland and Virginia."

There is no amplification of this conclusion, and there appears to be no warrant for the assumption that the plenary power to legislate for the District of Columbia is based on the fact that the territory embraced in the District was formerly part of Maryland and Virginia. The plenary power of Congress to legislate for the District of Columbia was required in order to provide that area with a governmental mechanism. It does not require that the governmental organization of the District of Columbia be similar to that of the states which ceded the area. The form and characteristics of the government for the District are created by Congress.

The power of Congress, however, to legislate for the District of Columbia is confined to constitutional limitations. It was recognized in *National Mutual Insurance Co.* v. *Tidewater T. Co.*, 337 U.S. 582, 602, that the congressional power can not be exercised in a manner so as "to draw into congressional control subjects over which there has been no delegation of power to the Federal government."

This Court specifically stated in the *O'Donoghue* case:

> "the judicial power thus conferred [by Article III] is not and cannot be affected by the additional congressional legislation included under Article I, Section 8, Clause 17, imposing upon such courts other duties, which, because that special power is limited to the District, Congress cannot impose upon inferior federal courts elsewhere. The two powers are not incompatible; and we perceive no reason for holding that the plenary power given by the District clause of the Constitution may be used to destroy the operative effect of the judicial clause within the District . . ." *O'Donoghue* v. *U.S.*, *supra*, p. 546.

In the case at bar it is beyond the delegated powers of the Federal Courts to entertain an action between aliens. This is a basic restriction upon the jurisdiction of Federal courts, and would appear to have a broader basis than the jealous guarding by the states of their judicial powers over their citizens. The thrust of the restriction is to remove

the Federal courts from an area where its processes could become involved in foreign affairs and the affairs of foreigners.

There is nothing in the concept of the duality of the Federal courts in the District of Columbia which permits or requires the extension of their jurisdiction to an action between aliens. Although such courts function as state courts, they still retain the character of Federal courts, and the exercise of the normal powers of a state court does not require the extension of the jurisdiction of these courts to actions between aliens. In considering the scope of Article I, Section 8, Clause 17, the Court of Appeals for the District of Columbia Circuit has stated that "Congress may legislate within the District for every proper purpose of government" and has power "to provide for the general welfare of the citizens within the District of Columbia" subject only to constitutional restrictions which act directly or by implication upon the Federal government. *Neild* v. *District of Columbia*, 71 App. D.C. 306, 309-310, 110 F. 2d 246 (1940). Jurisdiction to entertain suits between aliens meets neither of these tests. Such actions are not for the general welfare of citizens within the District of Columbia and are repugnant to the Constitutional restrictions on the jurisdiction of the Federal judiciary.

Although there is considerable doubt as to the extent the framers of the Constitution intended that the power of Congress to legislate for the District of Columbia should affect the limited powers of the Federal judiciary, it would seem beyond doubt that the framers did not intend to confer only upon the Federal courts in the District of Columbia the power to entertain suits between aliens. Whatever the reasons in the minds of the framers of the Constitution for denying to Federal courts jurisdiction of suits between aliens, these reasons would obtain with respect to the Federal courts located in the District of Columbia.

The case law on the relationships between Article III, Section 2, and Article I, Section 8, Clause 17, requires both

clarification and extension to the question of suits between aliens. The complexity of the constitutional problem and the unsettled state of law with respect thereto is reflected in both the *Tidewater* and *O'Donoghue* cases, *supra*. Moreover, the theories and doctrines therein developed have never been applied to the situation of suits between aliens in the Federal courts of the District of Columbia.

The importance of this issue is highlighted by the fact that the District of Columbia has become one of the world's most important diplomatic capitals and the sanctuary for foreigners of all shades of political opinion and with varying relations to the governments of their homeland. Unless it be considered a proper function of the government of the District of Columbia to adjudicate controversies of all varieties between such persons and their governments, and between factions of foreign governments, with both subtle and direct impact on foreign affairs, the doors of the Federal Courts in the District of Columbia should not be open to suits between aliens, when the doors of Federal courts elsewhere are constitutionally closed to them.

2. This litigation arises out of the administration of the internal affairs of the Republic of China. The determination of the controversy presented inevitably requires the interjection of the District Court into Chinese affairs.

Jurisdiction of the District Court has been invoked to compel compliance by officials of the Chinese government with orders issued by that government. The injunction was sought as an aid in the execution of the reorganization of the purchasing activities of the Chinese government in this country. The action was instituted when the petitioners challenged the lawfulness of the reorganization order and the order dismissing them from their procurement duties. The injunction is a large step in the enforcement of such challenged orders, which have as their real objective the return of the petitioners to Formosa where they will be subject to the unfettered will of Chiang. The question of the validity of the orders issued by a foreign government

to its diplomatic and military officials can be construed as nothing more than orders for the internal management of the affairs of the foreign government.

The record discloses that the petitioners are subject to conflicting orders from Acting President Li, directing the petitioners to ignore the orders issued by the Chiang Kai-shek regime and to continue the performance of their assigned functions. Whether the petitioners are under any obligation to refrain from carrying on their official activities, as ordered by Chiang, must, of necessity depend upon a resolution of which of the two claimants is the lawful President of China. This does not present an issue justiciable by the District Court for the District of Columbia, or for the American judiciary. *Sevilla* v. *Elizalde,* 72 App. D.C. 108, 113, 112 F. 2d 29, 34; See also *Doe* v. *Braden,* 16 How. 635, 657, 14 L. Ed. 1090; *Field, The Doctrine of Political Questions in the Federal Courts,* 8 Minn. L. Rev. 584; *Weston, Political Questions,* 38 Harv. Law Review 296. As will be observed from the exchange of correspondence between the District Judge and the Department of State, this is a question which even the political arm of our government will not approach frontally. Although the purposes of diplomacy may be served by the note of the Chinese Ambassador advising this government that Chiang Kai-shek has resumed the office of President of China, such a self-serving communication by an agent of one charged as a usurper can not, in the face of the evidence to the contrary, eliminate the requirement for a judicial finding that the petitioners have disobeyed a lawful order.

The courts below clearly equivocated and sought to evade this issue. It is not enough to say, for the purposes of this litigation, that the Chinese government on Formosa is recognized by this country. That does not reach the basic question of whether the petitioners have violated lawful orders of that government so as to establish the right of that government to relief. Moreover, if Chiang is not the lawful President of China, then any executive action, including the right to maintain this action, is not lawful and should have no binding effect.

In addition to these broad aspects of China's internal affairs, this litigation will require the American courts to go into the most minute detail of the internal management of these Chinese procurement activities. The court will be called upon to determine the sufficiency of financial reports and to adjudge whether such reports conform to rules and regulations of the foreign government, and will be required to examine documents and papers relating to vast numbers of transactions governing the multidude of items required by an air force. A proper accounting for these transactions would involve a review of the orders and directions, both verbal and written, issued in connection therewith. Unlike suits for accounting between persons physically present in the jurisdiction, the District Court would be frustrated in the exercise of its processes through the inability to compel the attendance of witnesses residing in Formosa whose testimony would be essential for a presentation by the petitioners of their case on the accounting or on the pending counterclaim.

Nothing is clearer under our form of government than that the Courts, Federal or state, cannot properly concern themselves with any aspects of the internal affairs of foreign governments. The internal affairs of foreign powers do not present justiciable issues, and are certainly not the concern of the American judiciary. In view of the constitutional delegation by the states to the Federal Government of all matters of foreign affairs, not even the State courts would have jurisdiction to entertain an action by a foreign government against its diplomatic and military representatives to enforce the execution of that government's internal affairs. The vitality of this concept is reflected in the well-established proposition that courts will not even assume jurisdiction in cases relating to problems of the internal management of foreign corporations. This principle has been strictly adhered to by the United States District Court for the District of Columbia. *Maccarone* v. *Big Sign Shop, Inc.*, 59 App. D. C. 345, 41 F. 2d 567; *Beasley*

v. *Mutual Housing Co.*, 59 App. D. C. 245, 39 F. 2d 290; *Clark* v. *Mutual Reserve Fund Life Association*, 14 App. D. C. 154. The leading case in the field decided by this Court is *Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123, wherein the district court was directed to dismiss a complaint which sought judicial review of the internal affairs of a foreign corporation. See also Fletcher, *Cyclopedia-Corporations* (1933 ed.), Vol. 18, pages 367-374.

3. This litigation is penal and punitive in nature and designed to enforce the punitive and political decrees of a foreign government against its political and military officers.

The efforts to remove the petitioners from any official responsibilities in connection with purchasing activities of the Chinese government is part of a program of retaliation for the disclosures by them of graft and corruption in the Chiang Kai-shek regime. The existence of such governmental corruption in the Chiang regime is one of the most widely reported international facts of the day and has been a major factor in the unhappy state of Far Eastern affairs. This matter of corruption has been of great concern to the executive and political branches of our government and has been influential in shaping our Far Eastern policies. The petitioners have sought to protect the dwindling funds available for rearmament of China by disclosing to the American Congress the graft and corruption prevailing in Formosa and by refusing to become an instrument for the further encroachment upon the public funds by officials at home.

This action is only part of a program to remove the petitioners from official position and to silence them. They have also been subjected to physical intimidation and harrassment. The penal and punitive purpose of Chiang is apparent in the collateral actions which have been taken against the petitioner Mow. This petitioner has been charged in Nassau County, New York, with the crime of theft of the property of the Chinese government in order

to obtain a search warrant to search the home of the petitioner's wife at Great Neck, Long Island. The house was searched over the vigorous protest of Mrs. Mow and her sons. See *In the Matter of the Application of Harry Mow to Vacate a Search Warrant* (September 5, 1952), District Court of Nassau County, First District, State of New York.

On August 9, 1952, petitioner Mow was arrested in the Republic of Mexico, where he had fled for his safety, and was jailed at the request of the Ambassador of the Chiang Kai-shek government in Mexico, pending extradition proceedings. He was charged with the crimes of robbery and theft, diversion of public funds and embezzlement under the criminal code enforced by Chiang's government on Formosa.

The penal and punitive nature of the action at bar is demonstrated by the identity of the criminal allegations made in the extradition proceedings with the allegations made in the proceeding before this Court.

The Chiang regime wants to get its hands on the petitioners so that they may be silenced. The first steps in the neutralization process were the orders to reorganize the purchasing activities of the Chinese government in the United States and to relieve the petitioners of their official duties. When the petitioners failed to obey these unlawful orders, this action was instituted to achieve the objectives of such orders. This action is a tactic of expediency resorted to in the absence of a treaty of extradition between China and the United States. Expediency cannot determine jurisdiction. *National Mutual Insurance Co.* v. *Tidewater T. Co., supra,* at 645.

Although the courts below recognized the penal and punitive nature of the action, it was held by the appellate court "that relief need not be withheld because in some sense it may be described as a substitute for penal action". It was not recognized that the present case is a subterfuge to deceive American courts into becoming a means for punishing

Mow for his disclosures against the Chiang Kai-shek regime. This punishment has been inflicted by the orders below, which effectively preclude petitioners from the performance of their official duties, silence them as opponents of Chiang, and deprive them of the means for their defense. The insidious nature of the situation is apparent in the fact that all of this has been accomplished without any hearing on the merits.

The salutary rule that our courts will not enforce another nation's penal laws was well stated long ago by this Court in *Wisconsin* v. *Pelican Insurance Company of New Orleans*, 127 U. S. 265; see also *The Antelope*, 10 Wheat. 66, 123, 6 L. Ed. 268; *Huntington* v. *Attrill*, 146 U. S. 657; *Arkansas* v. *Bowen*, 3 App. D. C. 537; *Galveston, H. & S. A. R. Co.* v. *Wallace*, 223 U. S. 481; *Loucks* v. *Standard Oil Co.*, 224 N. Y. 99, 120 N. E. 198. In the *Pelican Insurance* case, *supra*, this Court stated:

> "By the law of England and of the United States the penal laws of a country do not reach beyond its own territory, except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the courts of another country. Wheat. Internat. L. 8th Ed. Sec. 113, 121." * * * *
>
> "The rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws, and to all judgments for such penalties. *If this were not so, all that would be necessary to give ubiquitous effect to a penal law would be to put the claim for a penalty into the shape of a judgment.* Whar. Confl. L. Sec. 833; Westlake Internat. L. 1st Ed. Sec. 388; Piggott, Foreign Judg., 209, 210." (Emphasis supplied.)

The courts below have so far departed from the standards of these cases as to call for an exercise of this Court's power of supervision.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari to the Court of Appeals for the District of Columbia Circuit should be granted.

Respectfully submitted,

WILLIAM A. ROBERTS
WARREN WOODS
400 De Sales Building
Washington 6, D. C.
Attorneys for Petitioners

Of Counsel:

ROBERTS & MCINNIS
IRENE KENNEDY
400 De Sales Building
Washington 6, D. C.

February 18, 1953

APPENDIX

Excerpts From Pertinent Provisions of the Constitution of the United States and Federal Statutes

Constitution of the United States:

Article 1, Section 8, Clause 17:

"The Congress shall have power . . . to Exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States . . ."

* * * * *

Article 3, Section 2, Clause 1:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

* * * * *

Statutes of the United States:

Title 28, Section 1332 U. S. C.:

"Diversity of citizenship; amount in controversy

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3,000 exclusive of interest and costs, and is between:

(1) Citizens of different States;

(2) Citizens of a State, and foreign states or citizens or subjects thereof;

(3) Citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) The word 'States', as used in this section, includes the Territories and the District of Columbia."

* * * * *

District of Columbia Code (1940 ed. now 1951 ed.)

Title 11, Section 306:

"Said court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district . . ."

* * * * *

Office - Supreme Court, U.S.
FILED
MAR 12 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term 1952

No. 613

PANG-TSU MOW and VE-SHUEN HSIANG,
Petitioners,

v.

REPUBLIC OF CHINA,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

WILLIAM E. LEAHY
WM. J. HUGHES, JR.
1000 Bowen Building
Washington, D. C.
Attorneys for Respondent

CHAUNCEY BELKNAP
AMBROSE L. CRAM
1 Wall Street
New York City
Of Counsel

WILSON - EPES PRINTING CO. - RE 7-6003 - WASHINGTON 1, D. C.

INDEX

PAGE

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Statute Involved 2

Statement 2

Reasons Why Writ Should Be Denied 5

Argument:

A. The Trial Court Had Jurisdiction 6

B. The Present Suit Does Not Require Adjudication of the "Internal Affairs" of the Republic of China 8

C. The Present Suit Is Not Brought "To Enforce the Punitive and Political Decrees of a Foreign Country" 9

D. Petitioners' Slurs 10

Conclusion 11

TABLE OF CASES

Anastasio v. Anastasio, Civil Action No. 12090, Dist. Ct. D. C 8

Carrera v. Carrera, 84 App. D. C. 333, 174 F. (2) 496 8

Colombia v. Cauca Co., 190 U. S. 524, 526 6

Deckert v. Independence Corp., 311 U. S. 282 3

Garberson v. Garberson, 82 F. Supp. 706, 709 7

National Mutual Insurance Co. v. Tidewater Transfer Co., 337 U. S. 582, 590 7

O'Donoghue v. U. S., 289 U. S. 516, 545, 546 ..... 7, 8

Sevilla v. Elizalde, 112 F. (2) 29 8

Stern v. Ruzika, Dist. No. 6878 8

Wilbur v. Ford, 81 F. Supp. 641 7

CONSTITUTION AND STATUTES

28 U.S.C., Section 1332 6

District of Columbia Code (1951), Title 11, Section 306 ..... 2, 5, 6, 7

PAGE

District of Columbia Code (1951), Title 11, Section 308 ..... 6, 7
Constitution of the United States, Article 3, Section 2.. 6, 7
Constitution of the United States, Article 1, Section 8, Cl. 17 ..... 7, 8

MISCELLANEOUS

Rule 54(B) F.R.P.C..... 4
Story, Constitution, Secs. 1699, 1700..... 6

IN THE

Supreme Court of the United States

October Term 1952

No. 613

PANG-TSU MOW and VE-SHUEN HSIANG,
Petitioners,

v.

REPUBLIC OF CHINA,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Opinions Below

The opinion of the District Court on the grant of a preliminary injunction is found in the record at p. 127; it is reported in 101 F. Supp. 646. Findings of Fact and Conclusions of Law are found in the record at pp. 132-134.

The opinion of the Court below is found in the record at p. 428.

The preliminary injunction is found at R. 135; the so-called permanent injunction at R. 335-337.

Jurisdiction

The judgment of the Court of Appeals was entered November 20, 1952 (R. 439). The petition for a writ of certiorari was filed on February 18, 1953. Petitioners invoke the jurisdiction of this Court under 28 U.S.C. Sec. 1254.

Questions Presented

1. Whether the United States District Court for the District of Columbia had jurisdiction of a suit for an accounting for approximately $49,000,000 brought by the Republic of China against two faithless employees.

2. Whether a preliminary injunction restraining these employees from disposing of governmental funds was improvidently granted.

Statute Involved

The statute conferring jurisdiction on the United States District Court for the District of Columbia is *D. C. Code* (1951) 11-306 reading as follows:

> "Said court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district * * *."

Statement

Respondent, the Republic of China, sued Mow and Hsiang, petitioners, in the United States District Court for the District of Columbia for an accounting of some $49,000,000 entrusted to Mow as head of the Chinese Air Force Office in the United States for the purchase of supplies and for related governmental purposes. (R. 2-5). The Chinese government abolished that Office in April 1951 and ordered Mow, its director, and Hsiang, his executive officer, to turn over its funds and records to a

newly created Procurement Commission. (R. 133, finding 7). This they refused to do, and they also disobeyed a further order of August 21, 1951, to deliver the funds and records to the Chinese Ambassador to the United States and another official. (R. 133-134, findings 8, 9, 10). Mow and Hsiang were relieved of office and thereafter this suit was filed against them on November 14, 1951. The verified complaint, supported by a detailed affidavit of Dr. L. C. Cha, Vice-Minister of Justice of China, asked, *inter alia*, a preliminary injunction against defendants spending or otherwise disposing of governmental funds. (R. 19-20) Without filing an answer to the complaint or any counter-affidavit, Mow and Hsiang appeared specially and moved to dismiss, asserting lack of jurisdiction. (R. 32-39). Subsequently, both petitioners entered a general appearance. (R. 93). In support of their motion, petitioners contended that the Court had no jurisdiction because the suit was between aliens and that in any event the true President of China was one Li who had not, they said, authorized the suit. (R. 33-34). The trial Court communicated with the State Department which advised it that the United States recognized the Republic of China of which the Honorable V. K. Wellington Koo was the ambassador, and enclosed a copy of a letter from the Ambassador stating his Government had authorized the suit. (R. 54-61). The Court thereupon found the suit was duly authorized by the Republic of China through its accredited Ambassador (R. 129-133), overruled the claim of lack of jurisdiction and after making findings of irreparable damage, issued the preliminary injunction. (R. 133-135). Petitioners then appealed.[1] (R. 138).

---

[1] The appeal attempted also to secure review of the order overruling petitioners' motion to dismiss. This the Court below held it had no power to do, the order being non-final. However, on the basis of *Deckert* v. *Independence Corp.*, 311 U.S. 282, the Court below reviewed the jurisdictional question re alienage as pertinent to the validity of the preliminary injunction. (R. 432).

Subsequently petitioners filed an answer to the complaint and two counterclaims. (R. 302, 308). On January 8, 1952, respondent served a notice that it would take the deposition of defendant Mow on January 17, 1952 (R. 293). Mow thereupon fled to Mexico where he still remains. His continued refusal to appear, although given ample time, resulted in the Court's striking Mow's pleadings and granting respondent's motion for judgment by default, coupled with a reference to the Auditor. (R. 335). Mow, still *in absentia,* appealed from this default judgment and reference but the Court below held it had no jurisdiction to review it as it was non-final in character. (R. 435-436, 438).

The opinion below shows that the Court considered only one question as properly before it, namely, the validity of the preliminary injunction.[1] (R. 434-437, 438). Petitioners' "Statement" is confusing and appears to suggest the entire case is before this Court. However, the narrow issue really presented is indicated by petitioners' statement in their petition, p. 5:

> "Review is sought in this proceeding from that portion of the judgment of the Court of Appeals holding that the District Court for the District of Columbia has jurisdiction to issue the preliminary and permanent injunctions."

It will be noted that the above statement deals with jurisdiction only. Indeed, in one form or another this is the sole burden of the petition herein, which contains no showing at all that the injunction was improvidently granted or was not a reasonable step to protect the funds in litigation. The Court below found adequate support

---

[1] The Court below refused to disturb the so-called permanent injunction but pointed out that it was really not permanent because of petitioners' failure to comply with Rule 54(b) FRCP. (R. 436). It treated the preliminary injunction as in effect. (R. 438, 439).

for the injunction in the trial Court's findings of fact based on the sworn complaint and the detailed affidavit of the Vice-Minister of Justice. (R. 434, cf. 132-134).

Reasons Why Writ Should Be Denied

This Court seldom grants certiorari at an interlocutory stage and Petitioners have advanced no sufficient reasons for review of the preliminary injunction granted below.

1. Petitioners urge that a question of "general importance" and "of first impression before this Court" is presented by their contention that the United States District Court for the District of Columbia has no jurisdiction over this action because no Federal court may entertain an action "between aliens". (Petition, p. 12) But this Court has long recognized that the courts of the District of Columbia are not only Federal courts, but are the equivalent of state courts as well. The jurisdiction granted by Congress in the exercise of its power over the District is clearly broad enough to comprehend such an action as this. *D. C. Code (1951) 11-306.* It is of no "general importance" to have the long-settled principle of the duality of function of the District of Columbia courts reiterated by this Court in the present case.

2. Petitioners urge that this litigation "does not present an issue justiciable by the District Court for the District of Columbia" because, they say, petitioners' liability "must, of necessity, depend upon which of * * * two claimants is the lawful President of China". (Petition pp. 16-17). But this action is authorized and brought by the Republic of China, a recognized foreign government, as shown by the official letter of its duly accredited Ambassador to the United States. (R. 54, 58, 60). The identity of the President of China is an irrelevant issue. Petitioners' effort to inject this issue into the case, and then to use it as a basis for defeating the jurisdiction

of the courts, is a transparent maneuver which failed in the courts below and cannot succeed here.

3. Petitioners urge that the courts should not take jurisdiction of the action because, petitioners allege, the action is brought "to enforce the punitive and political decrees of a foreign government". (Petition, p. 3). But again, it is petitioners who are trying to becloud with political considerations the issue which the complaint squarely presents, namely petitioners' liability, in this civil suit, to account for the government funds entrusted to their care. This Court will not be deceived by the attempt to label the action as "penal and punitive" merely because the faithless fiduciaries who are being called to account were former officials of a foreign government.

ARGUMENT

A. The Trial Court Had Jurisdiction:

Claiming the suit is one between aliens (although plaintiff is a sovereign state),[1] petitioners argue that the diversity grant found in Article 3, Section 2 of the Constitution and enacted into statute in *28 U.S.C. Sec. 1332* does not allow jurisdiction of suits wholly between aliens. The Complaint (R. 2, par. 1) does not invoke jurisdiction under these provisions but alleges jurisdiction under District Code provisions only, *D. C. Code (1940, now 1951), Title 11, Sections 301, 305, 306 and 325.* Sec. 306 provides that our District Court "shall have cognizance . . . of all cases in law and equity between parties, both or either of which shall be resident or be found within said district". Sec. 308 provides that no suit "shall be brought in the District Court by original process against any person who

[1] This Court in *Colombia* v. *Cauca Co.*, 190 U.S. 524, 526, repudiated the contention that foreign states were "aliens". See also *Story, Constitution,* Secs. 1699, 1700.

shall not be an inhabitant of or found within, the District . . ." Both Mow and Hsiang entered a general appearance by counsel on December 3, 1951. (R. 93). Hence all requirements for the exercise of jurisdiction under *D. C. Code,* Secs. 306 and 308, were present.

Petitioners' argument, however, seems to be that since jurisdiction of suits wholly between aliens cannot be vested in the ordinary United States district court under Article 3, Section 2, of the Constitution, it follows that jurisdiction of such suits cannot be vested in our local District Court under statutes based on Article 1, Sec. 8, Cl. 17 giving Congress exclusive power to legislate for the District of Columbia. But if this argument were sound, the United States District Court for the District of Columbia would have no jurisdiction in divorce, probate, lunacy or in administrative matters, none of which are cognizable in the ordinary federal courts (*Garberson* v. *Garberson,* 82 F. Supp. 706, 709; *Wilbur* v. *Ford,* 81 F. Supp. 641). In fact it would have no power to try non-federal crimes, although expressly given such power by D. C. Code (1951) 11:306. It is hornbook law that our District Court exercises a dual jurisdiction, (1) that of an ordinary federal District Court (*D. C. Code (1951) Title 11:324*), and (2) that of a state court as provided by Congress. (*D. C. Code (1951) Title 11, Sec. 306, 308*).

This Court in *National Mutual Insurance Co.* v. *Tidewater Transfer Co.,* 337 U.S. 582, 590, said:

> "It long has been held that Congress may clothe District of Columbia courts not only with the jurisdiction and powers of federal courts in the several states but with such authority as a state may confer on her courts."

The subject was fully discussed in *O'Donoghue* v. *U. S.,* 289 U. S. 516, where this Court said (p. 546):

> "If, in creating and defining the jurisdiction of the courts of the District, Congress were limited to Art.

> III, as it is in dealing with the other federal courts, the administrative and other jurisdiction spoken of could not be conferred upon the former."

Later in the same opinion, at p. 546, this Court referred to

> "congressional legislation, enacted under Article 1, Section 8, cl. 17, imposing upon such courts other duties, which, because that special power is limited to the District, Congress cannot impose upon inferior federal courts elsewhere."

The above cases repudiate completely petitioners' argument. There is no more objection to a suit by an alien against an alien in this District than to such a suit in a state court, where it is common knowledge that such suits are continually filed. Divorce cases between aliens are common in the District of Columbia. (*Carrera* v. *Carrera,* 84 App. D.C. 333; 174 F. (2) 496; *Anastasio* v. *Anastasio,* Civil Action No. 12090, Dist. Ct. D.C.). The recent case of *Sevilla* v. *Elizalde,* 112 F.(2) 29, was brought by an alien against an alien. *Stern* v. *Ruzika,* 44 F. Supp. 726; Ct. Appls. No. 6878 was an accounting suit between aliens.

It follows that there was no lack of jurisdiction in the District court below and that the Court of Appeals was right in so holding. (R. 432-433).

B. The Present Suit Does Not Require Adjudication of the "Internal Affairs" of the Republic of China:

The Court of Appeals held:

> "The suit is equitable in nature, designed to protect property asserted to belong to plaintiff, to prevent misuse of its funds by those alleged to have been its agents, and to secure an accounting from them". (R. 434).

Petitioners, however, try to torture the case into one to regulate the "internal affairs" of a foreign govern-

ment. (Petition pp. 12, 16-19). They work this out by claiming that the true president of China is not Chiang Kai-shek, as the Chinese Ambassador advised the State Department March 1, 1950 (R. 61), but a man named Li who came to this country in 1949 for his health and has been here ever since. Li, they say, has directed petitioners to ignore the orders of the Chiang Kai-shek government and hence, petitioners claim, the Court must decide who is the lawful president of China. (Petition p. 17).

But the Court below made short shrift of this argument, saying:

> "The Republic of China itself, not its president, is the plaintiff. Its status to sue, n. 4, *supra*, is unaffected by controversy over the presidency." (R. 434)

The Trial Court held, as to Li's claim to office:

> "This Court cannot entertain the statement of a citizen of a foreign country that he is the president of that country * * *" (R. 129).

Aside from the jurisdictional issue, the only matter decided below was that a preliminary injunction was valid to preserve the status quo. No political question of any kind was decided by the lower courts, and petitioners' attempt to inject such questions here should not be permitted to succeed.

C. The Present Suit Is Not Brought "to Enforce the Punitive and Political Decrees of a Foreign Government":

This is a civil suit. Its nature was correctly described in the quotation from the opinion of the Court below set forth on p. 8 of this brief. Petitioners' attempted characterization of such a suit as "punitive", "penal", or "political" cannot obscure the plain fact that the purpose of the action is to require a civil accounting from

faithless employees. The fact that the plaintiff in the suit is their own government does not change the nature of the action. The Court is asked not to punish the malefactors, but to compel the return of misappropriated funds. Petitioners cannot escape responsibility by attempting to inject political issues.

D. Petitioners' Slurs:

Petitioners sought to make the Courts below forums for the assertion of reckless charges against the recognized government of a friendly foreign power and vicious attacks upon the personal integrity and right to office of its President. Having been rebuffed in these attempts, petitioners in their application to this Court renew their assault, coupled now with the shameless additional charge that, "The courts below clearly equivocated and sought to evade this issue". (Petition, p. 17).

We indignantly deny these accusations, but in view of their nature, and particularly of their source, we shall not dignify them with any detailed reply. The honorable record of the courts of the District of Columbia is answer enough to such irresponsible charges of equivocation and evasion. The charges against the Republic of China, a friendly and allied government, and its chief executive, Generalissimo Chiang Kai-shek, are of the same piece, equally irresponsible and lacking in substance. By descending to the level of such tactics, petitioners have underlined, as nothing else could, the absence of any meritorious defense to this suit.

Petitioners are asking this Court to make the District of Columbia a sanctuary in which the faithless employees of a foreign government may defraud that government with complete immunity from civil suit. Such a doctrine would be monstrous and absurd. Every inclination of our Courts should be to assist the Republic of China in its present predicament and to hear and determine the present suit.

CONCLUSION

The petition should be denied.

Respectfully submitted,

WILLIAM E. LEAHY
WM. J. HUGHES, JR.
1000 Bowen Building
Washington, D. C.
Attorneys for Respondent

CHAUNCEY BELKNAP
AMBROSE L. CRAM
1 Wall Street
New York City
Of Counsel

22

Office - Supreme Court, U.S.
FILED
APR 2 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 613

PANG-TSU MOW and VE-SHUEN HSIANG, *Petitioners,*

v.

REPUBLIC OF CHINA, *Respondent.*

SUPPLEMENTAL BRIEF FOR PETITIONERS

WILLIAM A. ROBERTS,
WARREN WOODS,
400 DeSales Building,
Washington 6, D. C.,
Attorneys for Petitioners.

Of Counsel:
ROBERTS & MCINNIS,
IRENE KENNEDY,
400 DeSales Building,
Washington 6, D. C.

April 2, 1953.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 613

PANG-TSU MOW and VE-SHUEN HSIANG, *Petitioners,*

v.

REPUBLIC OF CHINA, *Respondent.*

SUPPLEMENTAL BRIEF FOR PETITIONERS

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petitioners, appellants below, Pang-Tsu Mow and Ve-Shuen Hsiang file this supplementary brief in support of their petition for a Writ of Certiorari which was filed with this Court on February 18, 1953, in order to bring to the attention of the Court the attached decision of the Judge of the First Criminal District of the Federal District of Mexico, Republic of Mexico, issued on February 21, 1953, in the matter of the extradition of General Pang-Tsu Mow.

Petitioners submit that the decision of the Federal Judge of Mexico in the extradition matter is pertinent to the second and third questions presented in the petition for a Writ of Certiorari. The second question is whether the United States District Court for the District of Columbia may entertain jurisdiction of an action between a foreign government and two of its officials involving the political and in-

ternal affairs of a foreign government. The third question is whether the United States District Court for the District of Columbia has jurisdiction to enforce punitive and political decrees of a foreign government against its political and military officers. The Mexican Judge decides both these questions by finding that the Republic of China seeks to punish Mow for offenses, if any, which are of a political or military nature. He also suggests that the Republic of China may have acted fraudulently in pretending to demand extradition for ordinary offenses when its intent was to punish for political and military reasons.

While the decision of the Mexico City Judge was announced on February 21, 1953, it was not possible to obtain a copy properly authenticated by the American Consul in Mexico City until March 24, 1953. The decision then had to be translated and the translation was only completed on March 31st.

The relevance of the decision of the Federal Judge in Mexico City to the questions mentioned is pparent from the following summary of the decision.

The decision recites that on August 8, 1952, the Republic of China asked the Republic of Mexico to detain Pang-Tsu Mow with the purpose of extradition for the crimes of embezzlement, theft and misappropriation of documents; that pursuant to this request, Mow was detained and the question of the propriety of his extradition to Formosa was submitted to the Judge for his consideration, in accordance with Mexican law; that proofs in support of the demand and exceptions in opposition to the demand were submitted and that on consideration of the proofs and exceptions the Judge has reached a decision.

Beginning at Page 8 of the decision, the Judge considers and decides each of twenty-nine separate exceptions submitted to him by General Mow's defense attorneys. Of the twenty-nine exceptions, sixteen were granted in whole or in part and the Judge reached the conclusion as expressed at Page 46 of the decision that "the extradition of General

Pang-Tsu Mow, requested by the Nationalist Government of the Republic of China, is contrary to law." The portions of the Judge's decision which are particularly relevant to the questions now raised in this Court are covered in the Judge's analysis of Exceptions No. 7, No. 10, No. 13, and No. 14 which appear respectively at Pages 14, 23, 26 and 29 of the decision.

Exception No. 7 argued that proof of the existence of the corpus delicti of the crimes for which extradition was sought, had not been presented. The Judge held that inconsistencies existed between the representations made by the Republic of China to the Courts of the United States in the litigation which is now the subject of this appeal, and the representations made to the Mexican Government in the extradition matter. He points out that the proof of the crimes alleged to have been committed is vague and ambiguous and not in conformity with the requirements of Mexican law, and he therefore grants this Exception.

Exception No. 10 argued that the crimes, if any, attributed to General Mow were "violations of a military nature" and therefore not subject to extradition. The Judge considers this argument at length and concludes:

> "In consequence, if the offenses for which extradition is requested, even assuming them to be proven, would constitute not offenses of the common order but of military jurisdiction, for this other reason the delivery of General Pang-Tsu Mow to the government which requests it should be refused . . . ." (Decision p. 25)

In Exception No. 13, the alternative argument was submitted by General Mow's attorneys that if the offenses charged to him were not of a military nature, then they were of "a political order" and the surrender of Mow was sought "to enforce reprisals against him for actions which have been considered prejudicial to the Chinese political order". (Decision, p. 26). In analyzing this Exception, the Judge refers to documents which are of record before the

United States Supreme Court in this appeal. For example, the Mexican Judge mentions at Page 27 of his decision, orders issued to Mow on August 22, 1951 to return to Taipeh to answer certain charges of a political nature. This document is reproduced at Record Pages 23-25 before this Court. The Mexican Judge then finds that:

> "It cannot be denied that the charges just mentioned constitute violations of a political order . . . ."

and that:

> ". . . for the sum of all these circumstances it is presumable that the request for extradition, even though based on the indicated offenses of a common order, has obeyed in the case motives of a political order." (Decision, pp. 28-29)

Finally, in Exception No. 14 General Mow's attorneys argued that the Republic of China had fraudulently sought to obtain extradition by alleging the existence of offenses of the common order, whereas in fact the real offenses imputed to Mow were military or political offenses. The Judge held that since he had ruled that Exceptions No. 10 and No. 13 were well-founded:

> ". . . because it was considered that the offenses imputed to General Mow, had they been proven, would constitute offenses of a military order and not of the common order as has been pretended by the petitioner, and that the circumstances of the case lead us to consider that in the request for extradition there exist motives of a political nature, such reasons are sufficient for this Court to believe that the demand of the Government of the Republic of China should not be granted, independently of whether or not this type of legal fraud is found in this case." (Decision, p. 29)

Petitioners argued in their brief in support of the petition for Writ of Certiorari that "the question of the validity of the orders issued by a foreign government to its diplomatic and military officials can be construed as nothing

more than orders for the internal management of the affairs of the foreign government. (Petition, Pages 16-17). We pointed out that "in view of the constitutional delegation by the states to the federal government of all matters of foreign affairs, not even the state courts would have jurisdiction to entertain an action by a foreign government against its diplomatic and military representatives to enforce the execution of that government's internal affairs." (Petition, Page 18). We also argued that the present litigation represented an invocation of the jurisdiction of our Federal courts as a subterfuge by means of which to enforce the punitive and political decrees of a foreign government against its political and military officers, and that "the salutary rule that our courts will not enforce another nation's penal laws" has long been recognized by this court. (Petition, Page 21).

The political and punitive purpose of the District Court action initiated in the United States by the Republic of China in this case is likewise emphasized in the brief of respondent in opposition to this petition for a Writ of Certiorari. Respondent, although disclaiming a political and punitive purpose, candidly discloses such a purpose at Page 10 of its brief when it says:

> "Petitioners are asking this court to make the District of Columbia a sanctuary in which the *faithless* employees of a foreign government may *defraud* that government with complete immunity from civil suit." (Emphasis supplied)

It is apparent from the decision of the Mexican Judge that he agrees with our contention that the Republic of China is attempting to punish General Mow for an offense, if any, which the Republic of China itself regards as criminal, political or military in nature. Respondent's persistence in stressing the character of Mow, referring to him repeatedly as "a faithless employee" and characterizing his actions as an attempt to "defraud" his government, highlights the punitive and political intent present in this case. Respondent seeks to punish Mow; if Mow were in

Formosa, he would be killed. The Mexican Judge recognizes this punitive intent for what it is.

Unable to kill him physically, respondent seeks in the United States to kill him economically. Treaties of extradition are the approved international device for obtaining jurisdiction over "faithless" employees of foreign governments who seek to "defraud" their governments. Civil jurisdiction cannot be conferred on the United States District Court for the District of Columbia simply because Chiang-Kai-shek has neglected his obligation to negotiate an extradition treaty.

It must be remembered that while the Courts of the District of Columbia may have a broader jurisdiction than other federal courts, they are nevertheless subject to constitutional limitations and among these limitations is the Tenth Amendment to the Constitution, which provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Mow remains in prison until final disposition of the extradition request by action of the President of the Republic of Mexico. This Court should act to protect Mow from political persecution in the United States by refusing to permit the Courts of the United States to become the handmaidens of Chinese Nationalist political intrigue.

Respectfully submitted,

WILLIAM A. ROBERTS,
WARREN WOODS,
400 DeSales Building,
Washington 6, D. C.,
Attorneys for Petitioners

Of Counsel:
ROBERTS & MCINNIS,
IRENE KENNEDY,
400 DeSales Building,
Washington 6, D. C.

April 2, 1953.